

The Department has no statutory authority to waive the mandatory Electronic Funds Transfer requirements contained in Section 3 of the Retailers' Occupation Tax Act. See 35 ILCS 120/3. (This is a GIL).

October 26, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 9, 2000. We apologize for the delay in our response to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

By the direction of John of the IDR sales tax telephone support number, we are writing to ask you to waive the requirement for EFT filing due to nature of our business. We are an engineering and construction company located in CITY/STATE and CITY, Illinois. By the nature of our business, we perform engineering and large construction contracts in numerous states. In 1999 we performed a \$2,970,000 construction contract for COMPANY in CITY, Illinois. The contract was completed in January, 2000 and because we remitted the required sales tax for this contract in 1999, we have fallen into the Electronic Funds Program limits which not only require use to file EFT but to remit 25% of the 1999 monthly taxes in 2000.

We wrote to the EFT division on May 10th requesting a waiver because this one-time contract was completed and we stated the 2000 sales tax amounts paid as follows: (Please note that the February through June amounts were Use Tax only. No Sales Tax was collected during this period)

January 2000=	\$9,603
February 2000=	82
March 2000=	391
April 2000=	169
May 2000=	31
June 2000=	199

We received a denial letter from the EFT division dated 6/27/00 stating there was no discretionary authority to waive the EFT requirement and referred us to the Illinois website and the Illinois Compiled Statutes 35 ILCS 120/3. In examining this site we saw that 'However, if a taxpayer can show the Department that a substantial change in the

taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the \$20,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayers reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term'.

We feel we are much more aligned with a 'manufacturer' rather than a 'retailer' status. It also seems unfair to be required to pay 25% of a prior year monthly tax due of \$1,757 when we can clearly see that the 2000 Illinois Sales Tax will be much lower and we will be greatly overpaid at the end of the year 2000. Most contracts we perform in Illinois fall under the 'Manufacturing' exemption and the 1999 contract was not our normal course of business of work for the mining industry.

We respectfully ask your assistance in redetermination of our EFT filing status and ask that we may submit the form RR-3 based on current month estimates rather than prior year actual amounts. Per Department regulations, we feel our average monthly tax liability for the reasonably foreseeable future will fall below the EFT threshold.

Should our filing status change in the future, we will contact the department.

Public Act 91-541 became effective on August 13, 1999 and changed the threshold requirements for mandatory payments by use of electronic funds transfer (EFT) and mandatory quarter monthly payments.

QUARTER MONTHLY PAYMENTS

On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was \$20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. 35 ILCS 120/3. Previously, the mandatory quarter monthly payment threshold was \$10,000 or more per month.

Please note that, on and after October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of \$20,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than \$20,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes

the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the \$20,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term. 35 ILCS 120/3.

ELECTRONIC FUNDS TRANSFER

Beginning October 1, 2000, a taxpayer who has an annual tax liability of \$200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "annual tax liability" shall be the sum of the taxpayer's liabilities under this Act (Retailers' Occupation Tax Act), and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. 35 ILCS 120/3. The mandatory EFT requirement was previously \$50,000 or more per month.

The Department has no statutory authority to waive or delay the implementation of these statutory provisions. The language you are referring to in your letter regarding a substantial change in a taxpayer's business is only applicable to the determination of whether a taxpayer is required to make quarter monthly payments. I am forwarding a copy of your letter to the Department's Sales Tax Processing Division regarding your company's request to change its reporting status for making quarter monthly payments. However, the statutory provisions regarding payments by electronic funds transfer do not contain similar authorization for the Department to vary from the specified amounts for mandatory participation.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk